



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/684,403 | 10/04/2000 | Tom Van Horn | MCTA-002/03US | 2392 |
| 758 | 7590 | 11/16/2005 | EXAMINER | |
| FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041 | | | SMITH, JEFFREY A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3625 | |

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 09/684,403 | Applicant(s) VAN HORN ET AL. | |
| | Examiner Jeffrey A. Smith | Art Unit 3625 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43,45-58 and 73-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 43,45-58 and 73-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

y

DETAILED ACTION

Response to Amendment

The response filed August 18, 2005 has been entered and considered.

Claims 43, 45-58, and 73-77 are pending.

Claims 1-42, 44¹, and 59-72 have been cancelled.

Claims 43, and 51 are currently amended.

An action on the merits of claims 43, 45-58, and 73-77 follows.

Drawings

Replacement sheets containing figures 2-9 filed January 29, 2004 are approved.

Claim Objections

Claim 52 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Art Unit: 3625

It appears that the limitations recited in claim 52 are redundant to limitations added by amendment to claim 51.

In claims 52-58 and 74-77: the recitation of a "method" should read as --process-- to remain consistent with their respective independent claims.

Claim Rejections - 35 USC § 112

Claims 43, 45-58, and 73-77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 43, lines 5 and 7: the recitation "quantities of the item" (emphasis added) appears misdescriptive of the invention. It appears that the recitation should read --quantities associated with the item--. For example, when the item is a rebate, the quantity (or number of) rebates does not appear to be increased for any given buyer, but rather, the value associated with the rebate for any given buyer (in dollars as a quantity of value, for example) appears to be increased. In this example, the quantities (dollars) associated with the

¹ Claim 44 has been listed as "cancelled" despite remarks which move to indicate that claim 44 remains pending. The claim has been treated as having been cancelled.

Art Unit: 3625

item (rebate) increases. Other instances of this recitation appears in claims 51 and 73.

In claims 75-77, lines 1, respectively: the recitation of "72" in these claims has been interpreted as --73-- in each instance. Claim 72 has been cancelled, thus rendering these claims otherwise incomplete. Applicant must make the appropriate corrections.

In claims 75 and 77, lines 2, respectively: "the incentive item" lacks antecedent basis. For examination purposes, this recitation has been interpreted as --non-price attribute-- in each instance. Applicant must make the appropriate corrections.

In claim 43, lines 4-10: it is unclear as to the manner in which Applicant intends the recitation "the sale of the item...quantity of buyer offers" to limit the structure of the e-commerce data processing system. This is because the recitations appear to be directed to the nature or quality (possibly inherent) of the item itself, rather than to at least some functionality of the e-commerce data processing system. The Examiner notes that the item itself is not recited as a component of the system, per se, and to that end, the metes and bounds of the claim are unclear by the manner in which the claim has been structured. It is believed that Applicant has intended the claim to recite more than simply the functionality of

Art Unit: 3625

"[providing] the on-line group-buying sale of an item" (line 3-4). It is believed that Applicant has intended the claim to recite the additional functionality of some functionality which makes use the associations between the item and the recited price and non-price attributes of the item (for example). The claim has been treated as it is believed is Applicant's intent. However, Applicant should comment on the intent of the claim and should amend the claim such that it is consistent with the intent. The Examiner notes similar recitations in claims 51 and 73. These claims are written as process (or method) claims. In these claims, the recitations are couched in a step which "provides the on-line group-buying sale of an item". However, it is noted that the recitations of interest do not appear as active method steps. Accordingly, it is unclear as to the manner in which the nature or quality of the item itself moves to affect the steps of these methods.

Allowable Subject Matter

Claims 43, 45-58, and 73-77 (as interpreted) would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Art Unit: 3625

Response to Arguments

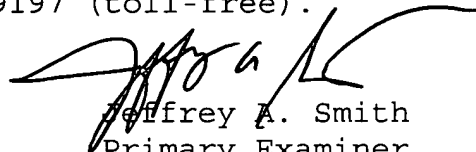
Applicant's arguments filed August 18, 2005, with respect to the rejection(s) of the claim(s) under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (571) 272-6763. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (571) 272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey A. Smith
Primary Examiner
Art Unit 3625

jas